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35236 7590 05/29/2008 THE CULBERTSON GROUP, P.C. 1114 LOST CREEK BLVD. SUITE 420 AUSTIN, TX 78746				
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/808,914  
Filing Date: March 25, 2004  
Appellant(s): LIND ET AL.

Russell D. Culbertson  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 19 February 2008 appealing from the Office action mailed 17 July 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2, 3, 7-9 & 12-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification (paragraph 0057) states that the automatic daubing is enabled in response to some input by the player. It does not specify that the input must be separate from the game request input.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 2, 3, 7-9 & 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Itkis (US Patent Number 4,856,787).

**Claims 15, 16, 18, 19:** Itkis teaches a gaming system for conducting bingo-type games

(20). The gaming system includes a player station (7). There is a user interface (Fig

5) included with the player station that enables a player using the player station to enter a game play request for a play in a bingo-type game to initiate a game play request communication from the player station. The user interface allows enabling the player to enter an automatic daub input for the play in the bingo-type game (by selecting the Automatic Bingo option). Since the player is required to enter the bingo card identification number of those cards he wishes to play automatically, there is a separate input for auto-daubing after entry of the game play request. (Col 4, 47-54) There is a data storage device (43) for storing a matched card set that includes a number of game play records. Each game play record including a respective bingo card representation and a result indicator indicating a result of a match between the respective bingo card representation and a set of game designations. (Col 5, 15-23) Itkis teaches a back office system (1) connected for communication with the player station and also connected for communication with the data storage device. (Fig 1) The back office system assigns a respective game play record from the matched card set to the player station in response to receiving the game play request communication. (Abstract) There is an automatic daub control for applying the set of game designations in response to the automatic daub input to automatically daub the respective bingo card representation associated with the respective game play record assigned to the player station. (Col 4, 47-54)

**Claims 2, 7, 12:** The automatic daub control is for automatically daubing multiple bingo card representations in response to the automatic daub input. The automatic daub control can daub as many cards as the player designates.

**Claims 3, 8, 13:** The user interface enables the player using the player station to

manually daub at least one bingo card representation as an alternative to automatic daubing. (Col 4, 47-54) The player may manually daub as many cards as he chooses.

**Claims 9, 14, 17:** Itkis teaches a touch screen (9). (Col 4, 35-46)

**(10) Response to Argument**

**The rejection under 35 U.S.C. §112, 1st paragraph**

Appellant argues that there is support in the drawings for the limitation that the input for automatic daubing is separate from the input requesting game play. In particular, Appellant points to Fig 9 as supporting this contention. Yet neither Fig 9 nor the discussion of Fig 9 in the specification discusses when the automatic daubing request is made. Fig 9 and its corresponding description in the specification merely specifies that if an automatic daubing request has been made, then the system will automatically daub the card. Fig 9 is silent about the timing of the automatic daubing request and the system in Fig 9 will work equally well whether the automatic daubing request is made with the game play request or after.

The only place in the specification that explicitly discusses the timing of the automatic daubing request is on page 25, lines 3-11. There, the specification makes it clear that the game play request is itself a request for automatic daubing. Note that contrary to Appellant's assertions, the previous two paragraphs say nothing about when the request for automatic daubing is made. These two paragraphs specify where the automatic daubing request is made – on the player station. These two paragraphs specify what occurs in response to an automatic daubing request – the bingo card is automatically daubed. But these paragraphs are completely silent about when the request is made.

The specification only makes one explicit disclosure regarding the timing of the automatic daubing request – the game play request is the automatic daubing request. That disclosure is consistent with the rest of the specification including the two preceding paragraphs and the figures. Simply put, the claimed subject matter is neither disclosed nor necessary for the functioning of the described system. Therefore, Examiner cannot agree that the feature is implied by the specification and it certainly is not described therein. This being the case, the rejection should be maintained.

**The rejection under 35 U.S.C. §102**

Appellant first argues that Itkis fails to teach a data storage device for storing a matched card set that include game play records made up of bingo card representations and result indicators. Appellant then admits that Itkis' back office system stores records of game outcomes (including game numbers drawn) & bingo card representations. (Brief, page 11, 14-19) It is clear that the record of game outcomes is a result indicator. An outcome is a result.

Appellant then states that, "A stored record of game outcomes and bingo card representations does not amount not a matched card set including a number of game play records as defined in claim 16." (Brief, page 11, 17-19) Appellant does not explain how storing records of games that include bingo card representations and game outcomes (including game numbers drawn) is different from storing records of games that include bingo card representations and result indicators.

The term "result indicator" is never adequately defined in either the claims or the specification. Exactly what is a result indicator? At first glance, it would appear simply to be an indicator of the final result of the game – did the player win or lose? But upon further reflection,

it becomes clear that a result indicator really must be a list of the bingo numbers drawn in the bingo game.

Appellant claims that the result indicator is transmitted to the player terminal along with the bingo card. Using the result indicator, either the player (in the case of manual daubing) or the system (in the case of automatic daubing) daubs the bingo card. Suppose the result indicator was merely an indication of the win/loss status of the bingo card. (I.e., suppose the player terminal received only a bingo card and a value that indicated that the card was a winner.) Daubing could not occur. Neither the player nor the system can daub bingo cards without bingo numbers.

Since the system cannot function unless the bingo numbers drawn are transmitted to the player terminal, Examiner concludes that these numbers are the critical element of the "result indicator". They indicate the result of the game. An indication that a particular card is a winner or a loser, while stored by Itkis, cannot be considered the claimed result indicator since the system cannot function if this data is the "result indicator" transmitted to the player terminal. "Winner" does not tell the player or the system where to daub.

Appellant's argument that Itkis' the back office system fails to assign a respective game play record from the matched card set to the player station in response to receiving the game play request. It is based on this faulty definition of the result indicator. As Appellant admits, Itkis' back office sends the bingo card and the called bingo numbers to the player terminal. (Brief, page 11, 24-26) Appellant argues that Itkis does not teach transmitting the result indicator because the terminal must determine if the card is a winner or a loser. (Brief, page 11, 26 - page 12, 1)



But as we have seen, the result indicator is not a determination that a card is a winner or loser. The system cannot function if “result indicator” is interpreted in that manner. “Result indicator” must include called bingo numbers in order for the system to function. This is not merely the broadest reasonable interpretation – it is the only reasonable interpretation.

Appellant claims transmitting a bingo card and a “result indicator” and daubing based on this data. Daubing requires a bingo card and called bingo numbers – not merely a win/loss designation. Itkis teaches transmitting a bingo card and called bingo numbers and daubing based on this data. Therefore Itkis anticipates the claimed invention.

Appellant argues that even though Itkis teaches storing the bingo card content, a record of the bingo numbers drawn and even a record of the win/loss determination, Itkis does not teach that the game play record is stored anywhere in the system. Since Itkis clearly teaches storing all of the claimed elements of the game play record, it would appear that Itkis does teach storing the claimed game play record -- unless there is some unclaimed (and undescribed) portion of the game play record.

Appellant states that Itkis does not assign a game play record (including a result indicator) in response to a game play request. However, in response to a game play request, Itkis assigns a bingo card and bingo numbers drawn to the player terminal. Thus it appears that Itkis does assign a game play record in response to a player request.

In light of the discussion above, it is clear that Itkis reads on Appellant’s invention and the rejection is proper.

It should be noted that Appellant does not argue that the claimed invention requires that the game play record & the card be matched prior to the game play request. It is Examiner’s

opinion that the claims do not require that these be matched prior to the game play request & that is the basis for this rejection. As noted in the previous office action, if Appellant made such an amendment, it would overcome the rejection under 35 U.S.C. §102. However, this would not result in patentability since, as also pointed out in the previous office action, there a large number of references that teach matching the game play record & the card prior to a play request. In fact, this is so well known in the art that it has a name -- Instant Bingo. Instant Bingo is essentially a scratch-off lottery game that has a bingo as its underlying game. Clearly, a combination of Itkis with and one of the Instant Bingo games cited in the previous office action would teach such an invention if claimed.

#### **Entry of the drawing change**

Appellant argues that the drawing changes submitted on 12 June 2007 should be entered. Whether this is an appealable matter or not, the question hinges on whether the rejection under 35 U.S.C. §112 is proper.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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